

Appl. No. 10/632,279
Atty. Docket No. AA539MC
Amtd. dated November 28, 2005
Reply to Office Action of July 28, 2005
Customer No. 27752

REMARKS

Claims 1, 2, 4-7, and 9-23 are pending in the present application. Claim 6 and Claim 7 have now been canceled.

It is believed these changes do not involve any introduction of new matter. Consequently, entry of these changes is believed to be in order and is respectfully requested.

Claim Rejections – 35 USC § 103

1) Claims 1, 2, 4-5 and 9-16 are rejected under 35 U.S.C. § 103(a) as being unpatentable over US 2002/0051798 to Koike et al ('798) in view of EP 027 730 (EP 730). Applicants respectfully traverse this rejection.

In order to establish a prima facie cast of obviousness, the Examiner must show that (1) there is some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings, (2) there is a reasonable expectation of success, and (3) all of the limitations of the claims are taught or suggested in the prior art (M.P.E.P. § 2143).

However, there is no suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify or to combine the reference teachings.

'798 discloses a gommage cosmetic composition comprising a water soluble polymer and a substance that is liquid at 25°C (excluding water). Further '798 discloses that the cosmetic composition may comprise a component which generates heat upon contact with water for the purpose of giving users a warmed feeling in addition to the effect of the gommage. Examples of such a component include various inorganic salts such as magnesium sulfate, calcium chloride and magnesium chloride. However, '798 does not disclose or teach wherein the polyoxyalkylene derivative is a polyoxyethylene/polyoxypropylene block copolymer, as now incorporated into Claim 1 of the present invention.

EP '730 teaches cosmetic compositions for hair or skin treatment, comprising heat generating compounds when brought into contact with water. Among the heat generating compounds EP '730 teaches fatty alcohols, alkylene glycols and polyoxyalkylene derivatives. The Examiner has asserted that it would have been obvious for one of ordinary skill in the art to use the pluronic or any other suitable polyalkylene derivatives as heat generating agents in the compositions of '798 because EP 730 teaches the above polyoxyalkylene derivatives are

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preferable as heat generating compounds and suggests that the heat generating compounds give an excellent finishing and cleansing effect to the consumer upon application, which results in a comfortable hot feeling. The Examiner has asserted that one of ordinary skill in the art would have expected at least a synergistic effect with a combination of the heat generating salts of '798 and the polyoxyethylene and polyoxypropylene copolymer of EP 730.

However, Applicants find that there is no motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. '798 discloses the use of inorganic salts for heat generation upon contact with water. Therefore, there is no motivation to search for a "synergistic" effect by combining the heat generating salts of '798 with the heat generating polyoxyalkylene derivatives of EP 730. '798 already provides a heat generating source, namely inorganic salts, and one of ordinary skill in the art would not be motivated to further search for a synergistic effect by combining the inorganic salts of '798 with the heat generating polyoxyalkylene derivatives of EP 730. There is no motivation in '798 to further search for a heat generating source. In fact, '730 teaches that the gomme composition that generates heat upon contact with water gives the user an excellent feeling. There is no motivation to search or modify the teachings of '730, to improve on the "excellent" feeling that '730 provides. There is no suggestion that one needs to seek a synergistic effect by combining the inorganic salts of '798 with the heat generating polyoxyalkylene derivatives of EP 730.

Therefore, the Examiner has not provided the requisite motivation to combine or modify '798 with EP 730 so as to obtain Applicants invention.

Further, Applicants have previously stated that the present invention, as now amended, requires the use of an inorganic heat generating agent as an anhydrous inorganic salt selected from the group consisting of sodium sulfate, calcium sulfate, magnesium sulfate, aluminum sulfate, calcium chloride, magnesium chloride, calcium oxide, and mixtures thereof. In the present invention, it is believed that polyalkylene derivatives can help the dispersion of inorganic heat generating agents and thus prevent the agglomeration of inorganic heat generating agents which causes gritty feel to the skin and/ or hair.

However, neither '798 nor EP 730 recognize the problem (gritty feel due to agglomeration) caused by the use of inorganic salt, nor recognize the need to reduce gritty feel. '798 teaches the use of components such as magnesium chloride, calcium chloride and magnesium sulfate as a component that generates heat upon contact. However, there is no teaching in '798 recognizing the problem of gritty feel due to agglomeration of inorganic heat

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generating agents and therefore does not seek a component to solve such a problem. i.e. polyoxyethylene/polyoxypropylene block copolymers. Therefore, one of skill in the art would not be motivated to combine '798 with another reference, in order to provide a solution to this problem. EP 730 teaches that polyoxyalkylene derivatives act as heat generating compounds. There is no teaching in EP 730 that polyalkylene derivatives can help the dispersion of inorganic heat generating agents and thus prevent the agglomeration of inorganic heat generating agents which causes gritty feel to the skin and/ or hair. There is no motivation to combine '798, which teaches components such as magnesium chloride, calcium chloride and magnesium sulfate as a component that generates heat upon contact, and combine with EP 730 which teaches another type of heat generating component, namely polyalkylene derivatives. As stated above, EP 730 teaches that the compositions of EP 730 provide an excellent feeling and there is no motivation or suggestion that one of skill in the art should further seek another heat generating component to provide a synergistic effect.

And even if EP 730 was combined with '798, there is no motivation to select the specific block copolymers, as now required by the present invention, among a variety of other heat generating compounds i.e. fatty alcohols, alkylene glycols, in order to use it with the specific heat generating inorganic salts of the present invention. Applicants have shown that there is therefore no prima facie cast of obviousness and respectfully request withdraw of the rejection.

2) Claims 17-23 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Koike et al ('798) in view of EP 027 730 (EP 730) as applied to claims 1, 2, 4-5 and 9-16 and further in view of U.S. 6,540,989 to Janchitraonvej ('989). Applicants respectfully traverse this rejection.

Claims 20-22 require an amidoamine and an acid.

As stated in the remarks above, the Examiner has not provided the requisite motivation to combine or modify '798 with EP 730 so as to obtain Applicants invention in claims 1, 2, 4-5 and 9-16. As Claims 17-23 depend from Claim 1, Applicants would like to apply the remarks above to this further 103(a) rejection as well. Therefore, the Examiner has not provided the requisite motivation to combine or modify '798 with EP 730, and further in view of '989 (as applied to claims 17-23).

Applicants have shown that there is therefore no prima facie cast of obviousness and respectfully request withdraw of the rejection.

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Conclusion

Applicants have made an earnest effort to place their application in proper form and distinguish their claimed invention from the prior art which was applied in the July 28, 2005 Office Action. WHEREFORE, consideration of this application, consideration of the accompanying claims and claim amendments submitted herewith, withdrawal of the rejections under 35 U.S.C § 103, and allowance of Claims 1, 2 4-5, and 9-23 are respectfully requested.

Respectfully submitted,
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